University of San Diego

Center for Public Interest Law | Children's Advocacy Institute

November 21, 2003

Jim Mayer, Executive Director
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

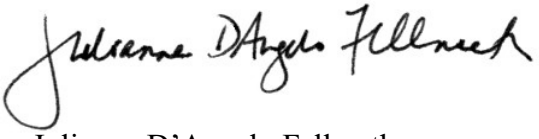
re: Acupuncture Regulation Subcommittee Testimony

Dear Mr. Mayer:

As you may recall, I testified before the Commission's Acupuncture Regulation Subcommittee on October 22, 2003. At the request of Commission Health Study Project Manager Hattie Hanley, attached is a "transcript" of the notes from which I delivered my testimony, along with my recollection of several of the questions I was asked and my answers to those questions.

I hope this testimony is of assistance to the Commission, and I wish you the best of luck as you continue your exploration of this subject.

Sincerely,



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Testimony of Julianne D'Angelo Fellmeth, Administrative Director
Center for Public Interest Law

before the

LITTLE HOOVER COMMISSION
Acupuncture Advisory Committee
October 22, 2003

Good afternoon. My name is Julie D'Angelo Fellmeth, and I am the Administrative Director of the Center for Public Interest Law (CPIL) at the University of San Diego School of Law.

Introduction to CPIL

Before I get started, I want to briefly describe my organization — the Center for Public Interest Law (CPIL) — so you know who I am and where I'm coming from.

I am a lawyer and a law professor. My husband, Professor Bob Fellmeth, and I run the Center for Public Interest Law at the University of San Diego School of Law.

For 23 years, we have taught a class in state regulatory and administrative law to law students. We focus on California agencies that regulate business, professions, and trades.

We teach our students the state laws — sometimes called the "sunshine statutes" — that govern the way agencies conduct business and make decisions — laws like the Open Meeting Act, the Public Records Act, and the Administrative Procedure Act.

We also teach them about limitations on agency authority — such as constitutional limitations and antitrust limitations.

We teach them to step back — to look at the forest instead of the trees — and question why we are doing what we are doing. Why are we regulating this particular profession? Is that regulation — that government intrusion into the marketplace — justified? If so, is it effective? How do we know? How do we measure that?

As part of their coursework, our law students monitor the activities of two different agencies for a year. They attend board meetings, they read agency enabling acts and regulations, they scour their agencies' Web sites, they get agency documents and meeting packets, they learn to track both legislation and litigation affecting their agencies and their licensees, and — twice during the year — they write fairly detailed articles on what their agencies are doing.

I edit those written reports and we publish them in our journal, the *California Regulatory Law Reporter*, which is intended to shine some light on the activities of state regulatory agencies — which otherwise operate in relative invisibility.

In the *Reporter*, we monitor the activities of 25 different state agencies in California. We look at everyone from the Medical Board to the Pharmacy Board to the Accountancy Board to the Department of Managed Health Care to the Department of Insurance to the Public Utilities Commission. For 15 years (between 1980 and 1995), we monitored the Acupuncture Board — which was first called the "Acupuncture Examining Committee" and then the "Acupuncture Committee" after it was stripped of its examining authorities due to a licensing exam scandal that I'm sure you've heard about.

Thus, we are very familiar with occupational licensing and regulation in California.

I understand this project came to you via the Joint Legislative Sunset Review Committee (JLSRC). CPIL was instrumental in the passage of the 1994 bill that created the JLSRC and the sunset review process. The purpose of that process is to ensure regular, comprehensive systematic legislative review and oversight of Department of Consumer Affairs agencies that the legislature has created; to ensure that there is still a need for these regulatory programs, and — if so — to evaluate their performance and adjust their enabling legislation accordingly.

I have participated actively in the sunset review process for eight years — soon to be nine. Over the past 23 years, we have evaluated and critiqued the regulatory programs of about 20 different agencies — both DCA and non-DCA alike.

My goal here today is not to talk about acupuncture. I know very little about acupuncture. I know a little bit about acupuncture regulation — because, as I said, CPIL monitored this agency for 15 years ending in 1995. But that was eight years ago, and we have not been involved in the dispute that has landed in your lap.

What I'd like to do today is to pull you out of the trees (and the nitty-gritty of acupuncture and its regulation) in favor of looking at the big-picture forest — at least for this part of your proceeding.

I would like to discuss the different kinds of regulatory structures — the various kinds of regulators, the advantages /disadvantages of each kind, and how to structure a regulator so that its decisions are based both upon **subject matter expertise** but also **independence from the trade/profession**, such that **the regulator is capable of achieving the goal of public protection**.

By way of background, the goal of regulation — or government interference into the marketplace — is always public protection. Or at least it should be.

Theoretically, government "regulates" — or interferes with the marketplace — because there is some market flaw that prevents normal marketplace functioning from driving out incompetent, dishonest, or impaired practitioners. That flaw could be potential irreparable harm if practitioners

are incompetent; it could be information deficit on the part of consumers; it could be a natural monopoly such that there's only one service provider; or it could be scarcity of the supply of a certain commodity.

And theoretically, government regulation should be targeted — aimed precisely — at attacking that identified flaw.

Licensing — which is what you're dealing with here — is only one form of regulation, and it is the most market-intrusive and restrictive form of regulation. We believe licensing should be reserved for trades and professions in which incompetence is likely to cause irreparable harm — that is, harm for which money cannot compensate. If there is likely irreparable harm — if licensing is truly warranted, then a proper regulator should do three things:

- it should formulate and administer a barrier to entry (*e.g.*, examination(s), educational requirements, experience requirements, or combination thereof) which is capable of and tailored to preventing incompetent people from practicing, because incompetent practice will cause irreparable harm to the public;

- it should establish industrywide standards of professional conduct and behavior for licensees which protect the public from that irreparable harm which justifies licensing; and

- it should aggressively police violations of those professional standards through a vigorous enforcement program.

And to repeat, the goal of licensing or any kind of government regulation should be **protection of the public**. As for DCA agencies, the legislature clarified this goal in a bill called AB 269 (Correa) in 2002. That bill added language to the enabling acts of every single DCA licensing program stating that the highest priority of all of these agencies in all of these functions — licensing, standardsetting, and enforcement — is protection of the public. AB 269 further states that where protection of the public is inconsistent with some other interest sought to be promoted, public protection is paramount.

Let's get to **regulatory structures** — there are basically two kinds of regulatory structures with some variations:

- First, there is the single human being bureaucrat who heads a department or a bureau which is charged with the regulation of a particular trade or profession. The single human being "director" or "commissioner" is usually appointed by the Governor and is directly responsible to the Governor. When the Governor goes, the Director goes.

- Second, there is the multimember board — whose members are often appointed by both the Governor and the legislature (predominantly the Governor). These board

members are appointed for terms — sometimes four years, sometimes six years (depending on the agency); and their terms can outlast the term of the official who appointed them.

The differences in these two kinds of structures lie primarily in the way they make major decisions, the level of public input into those decisions, and access to the regulator.

A "director" can make most agency decisions by herself, in her office, behind closed doors. A director can either limit public input to the bare minimum required by law, or can open up the agency's proceedings to wide public scrutiny. That often depends on the director, the Governor who appointed the director, the subject matter of the regulation, and external forces beyond the control of both the director and the Governor.

In contrast to a director's quasi-unilateral decisionmaking authority, a multimember board must meet in public in order to make most major decisions.

Under the Bagley-Keene Open Meeting Act — to which most "state bodies" in California are subject, a board must publish an agenda ten (10) days in advance, listing all the topics of discussion and/or action, and it must meet in public — at a meeting where public comment **must be** allowed — in order to make most decisions. So there is a built-in public forum at multimember boards subject to Bagley-Keene which is lacking at many departments and bureaus.

On the board vs. director structural issue, we generally prefer a board, because it comes with its own built-in public forum. And we believe that the public nature of a board meeting, and the chance for a shared decision, means more public credibility and confidence in the outcome.

At the same time, however, we have seen the department/director structure work as well — where there are mechanisms and incentives that encourage meaningful public input, both from the regulated industry and especially from consumer groups. And despite our general preference for boards, we have argued in favor of the sunset of certain DCA boards that were ineffective — that were so controlled by the profession that they were incapable of acting in the public interest.

One issue you may be struggling with is the identity of the regulator. The subject matter of occupational regulation is sometimes very complex. What kinds of qualifications should regulators have? Should they be members of the very trade/profession that they are regulating? Should they be independent outsiders who have no personal, professional, or pecuniary stake in their own government decisionmaking? Should we aim for a balance of both? How do we ensure that these regulators have access to on-point subject matter expertise, yet still be independent of the regulated industry so their decisions are on the merits and in the public interest and not just in the profession's interest?

First of all, let me tell you that regardless of the identity of the regulator, input from the regulated profession on major decisions is usually welcome and sometimes required.

- **Example**: When a regulator adopts regulations pursuant to the Administrative Procedure Act (APA), that regulator must afford a 45-day public comment period. I guarantee you that organized trade associations of licensees never pass up the opportunity to comment on proposed regulations — they support them, they oppose them, they threaten to challenge them in court, they rewrite them to suit their own interests.

  The APA also affords an opportunity for a public hearing on proposed regulations. If the regulator holds a hearing, that trade association is always there. If the regulator doesn't hold a hearing and the trade association wants one, the APA contains a provision (Gov't Code § 11346.8) under which the trade association (or anyone) can compel the regulator to hold a public hearing.

- **Another example**: When an occupational licensing agency is engaged in an adjudicative proceeding to take disciplinary action against a licensee, most of the time that agency is required by law to put on expert testimony — that is, testimony by a member of that very trade or profession — that the conduct of the accused licensee fell below applicable standards and justifies discipline. And many times, that's hard to do — finding a professional to testify against a fellow professional. Yet that is required of most agencies seeking to discipline a license.

So, in these ways, the profession always has input into major agency decisions. Do we "pile on" and additionally require that the regulator — the actual decisionmaker — be a member of the trade or profession as well?

Before 1970, the answer was generally yes. Before 1970, the composition of most DCA boards and commissions was 100% licensee — every single board member was a member of the very profession regulated by that board. With the evolution of the Ralph Nader-inspired consumer movement of the late 1960s and the enactment of the California Consumer Affairs Act in 1970, the legislature began to change the composition of many of these boards to add "public members" — people who are not licensed by the board upon which they sit.

At first, only a token number of public members were added to these boards — one or two at the most; certainly not enough to make a difference when it came to a vote.

As the years have passed, however, the tables have turned dramatically. What used to be a "professional member majority" has given way to a "public member majority" — at least on paper — at every DCA board except those that regulate the health care professions. And even one or two of the health care boards have a public member majority.

I believe this is fairly extraordinary. This has happened just within the past 10-12 years. There has really been an epiphany here. As the legislature has more carefully scrutinized the performance of these industry-dominated occupational licensing boards — and has observed firsthand their typical tendencies to enhance the barrier to entry to promote the prestige of the profession or keep out the

infidels from other states, adopt standards of practice that benefit the profession or a vocal subset of the profession, and engage in almost no meaningful discipline, the legislature has slowly but surely reconstituted many of these industry-dominated boards into public member majorities — **recognizing the importance of a regulator who is truly independent of the profession, and willing to and capable of making decisions on their merits and in the public interest.**

We have strongly supported this conversion — in fact, we believe that no member of any regulatory board should be a member of the trade or profession regulated by that board. No decisionmaker on any regulatory board should stand to benefit in any way from his/her own government decisionmaking.

Requiring these boards to be comprised of licensees presents two problems: (1) an apparent conflict of interest, and (2) very often, an actual — if unintended — conflict of interest.

The first problem is obvious — it's the old "fox guarding the henhouse" problem. Consumers lack confidence in regulatory boards that are controlled by the profession being regulated by that board.

The second problem is more subtle: Members of professions have endured the same educational requirements, taken the same difficult exams together, and become acculturated by their peers to certain "tribal rules" which — although they may be anticompetitive or injurious of the public interest — generally go unquestioned. These are the very "tribal rules" which state regulatory boards should examine and eliminate — but that will not happen if boards are dominated by members of the profession being regulated. Some examples:

- In 23 years of monitoring the State Bar, we have yet to see the Board of Governors — heavily dominated by lawyers — question the billing practices of lawyers, or attempt to draw the line between zealous advocacy for one's client and outright lying to the court in the preparation of memoranda of points and authorities.

- The Medical Board assiduously avoids the issue of "moonlighting" — the tendency of newly-licensed physicians who are engaged in residencies to work at clinics and other employment locations during "off-time" outside their residencies. Moonlighting may help to ensure that underserved communities receive medical care; it may help physicians begin to pay off medical school loans and other obligations; and it may unnecessarily endanger the lives of patients because exhausted moonlighting residents are working excessive hours. But these issues have never been explored because the Medical Board — dominated by physicians — avoids the issue.

Most trade associations argue that public members are not capable of understanding the complex, technical, profession-specific issues which frequently come before regulatory boards — and chafe at the notion of public members judging the performance or competence of a licensee in a disciplinary matter. However, we ask juries and judges — none of whom are physicians — to decide

medical malpractice cases every day. They listen to the evidence, receive an explanation of technical matters and expert opinions about whether the conduct at issue deviates from acceptable standards, and make decisions. And many issues that come before regulatory boards — and most disciplinary cases — do not concern complex, technical, profession-specific issues; they involve drug or alcohol abuse, improper sexual contact, criminal conduct, and other matters which a public member is as capable of understanding as is a professional member.

So we think public member majorities — even all public members — on boards that must make decisions in public and that encourage public participation is one way to **marry** expertise with independence. Those boards will get the profession's view — no doubt about it. If they don't, they can convene an advisory committee of professionals and get it. For the past 23 years, we have observed these boards being absolutely overwhelmed with testimony and input from the regulated industry — there is simply no reason to require that industry members be the decisionmakers as well.

Having said that, I have several caveats:

- You can't just convert a board to a public member majority and walk away — which, in a sense, the legislature has done. You have to make sure that the public members who are appointed are in fact independent of the regulated profession. It does no good if the Governor can appoint the spouse of a physician as a public member on the Medical Board. It does no good if the Assembly Speaker appoints a lawyer or lobbyist for the accounting profession as a public member on the Board of Accountancy. It does no good if the Senate Rules Committee appoints the owner of a barber college as a public member on the Barbering and Cosmetology Board.

  These people are not independent of the profession they regulate. They have a vested interest in continuing to do things the way they've always been done, or in somehow benefitting from their own government decisions. In recent years, the legislature has spent some time filling holes in the laws that describe qualifications of public members at some boards — and that's something I commend to you. Take a look at SB 1955 (Figueroa) from 2002 and AB 827 (Correa), which Governor Davis signed just a few weeks ago.

- Second, I believe there should be increased disclosure of business interests by public members — to ensure they are actually independent from the profession regulated by the board on which they sit. This is particularly a problem with lawyers who sit as public members on occupational licensing boards — there is no requirement that lawyer public members disclose or report who their clients are. If you want a lawyer sitting on the Board of Accountancy to be independent from the accounting profession, you need to make sure that he doesn't represent the Big Four, or get business from the Big Four — and that kind of disclosure does not happen now. All public members should at least have to certify that they don't get significant business from or do significant business with the profession they regulate.

- Third, all board members and other kinds of regulators need training in what it means to be a public official. Let's face it — many industry board members are active members of their trade associations; that's how they got to be on the board. In our observation, some of them view the regulatory agency as an extension of the trade association — they have no concept of the difference between a regulator and a trade association, and no concept of the very serious responsibilities and duties of public officials.

  Parent agencies like the Department of Consumer Affairs should play a key role here in training all board members in their new governmental responsibilities. There is also a wonderful organization in Washington, D.C. called the Citizen Advocacy Center (CAC) which is a support group for public members of health care boards. This group recognizes that professional members of health care boards are already (theoretically) subject matter experts, and they get significant input from trade associations in which they are usually leaders. But public members get very little training, very little input or support. CAC trains public members in the importance of their roles — it trains them to question the status quo and their industry colleagues as appropriate. And it teaches them about their very special role as a <u>regulator</u>.

- Finally, as I've mentioned before, all regulatory boards are bombarded with lobbying by trade associations. Getting professional input is not the issue. The tougher nut to crack is getting consumer groups involved so the professional input is challenged and there is balanced advocacy before the regulator — advocacy by someone without a profit stake. I'm willing to bet that since we stopped monitoring the Acupuncture Board, there has not been one person in the audience at any of its meetings who was not an acupuncturist, a representative of an acupuncture school or trade association, or some competing health care provider engaged in a turf battle with acupuncturists.

  On this issue, both the Department of Consumer Affairs and its individual boards need to do concerted outreach and create relationships with consumer groups, and encourage them to attend, participate, and contribute. Some boards do this — and their decisionmaking definitely benefits from it. To give you a concrete example, the Medical Board and the Board of Podiatric Medicine have both sought consumer input on the public disclosure issue; as a result, their public disclosure policies are among the most progressive of all state agencies.

  To encourage consumer group participation, some agencies have created "intervenor compensation" systems: If a consumer group participates in a proceeding and makes a contribution that is adopted by the agency, all or part of the consumer group's fees and costs are reimbursed. The Little Hoover Commission has already recognized this issue in its June 1998 report on the Department of Consumer Affairs (*Consumer Protection: A Quality of Life Investment*) — you should revisit that report.

In conclusion, in making recommendations on these very difficult issues that have been delegated to you by the legislature, I encourage you to make a long-range, long-term, broad recommendation on restructuring this regulator to make it more objective and more independent of the profession, and to better enable it to make decisions that benefit and protect the public rather than the profession and the schools.

Thank you for your time. I'm happy to answer any questions you may have.

[END OF PREPARED TESTIMONY]

Question: The Acupuncture Board receives very few complaints. What conclusions can we draw from that?

Answer: It's very possible that consumers are unaware of the existence and jurisdiction of the Acupuncture Board. The Commission should learn whether — and, if so, how — Board licensees are required to inform consumers of the Board's existence, purpose, and ways to contact the Board — *e.g.*, in a required disclosure, through a brochure that is required to be distributed, on a sign or poster that is required to be posted prominently in licensee premises (similar to a Board of Pharmacy requirement).

Also, the Board's most recent sunset review report indicates that it spends only 29% of its budget on enforcement, and about 63% on its examination and licensing functions. That is the reverse of the situation at most occupational licensing boards. Most others spend at least 75% of their budgets on enforcement, and engage in at least a few proactive enforcement functions. The Commission should question the Board about its enforcement budget.

Finally, this Board should probably not rely solely on consumers as its primary source of complaints. As I said, some consumers don't know the Board exists; others simply don't want to get involved; others are culturally uncomfortable with the "confrontation" aspect of filing a complaint and pursuing it. Many other occupational licensing boards have "mandatory reporting statutes" under which other social actors are required to report specific events involving licensees to the board. For example, Medical Board of California (MBC) statutes require malpractice insurers to report payouts on medical malpractice claims against physicians to MBC; court clerks must report criminal charges and convictions against physicians to MBC; hospitals that revoke, suspend, or restrict the admitting privileges of physicians must file a report with MBC; coroners who perform autopsies and suspect that physician gross negligence is the cause of death must file a report with MBC. These reports enable MBC to detect possible physician misconduct, wrongdoing, and/or impairment — and to investigate and take disciplinary action as appropriate. The Acupuncture Board lacks "mandatory reporting statutes."

Question: Some Commissioners believe that the Acupuncture Board's consumer brochure is a promotional document rather than a consumer education piece. What do you think?

Answer: I have not had an opportunity to review it. However, I will say that the job of a regulator is not to promote the profession; it is to regulate the profession in even-handed fashion. Promotion of a profession is the job of a voluntary trade association, not a government regulator.

Several years ago, the Board of Psychology published a consumer guide called *For Your Peace of Mind: A Consumer Guide to Psychological Services*. In my view, that board did a very good, neutral, and objective job of describing the differences between the various kinds of therapists (*e.g.*, psychiatrists, psychologists, marriage and family therapists, licensed clinical social workers, etc.) without promoting one type over the others. That brochure is not a "spin" document, but a guide to people who are considering therapy. In fact, it contains a very informative "patient's bill of rights," advice on how to interview a prospective therapist, and numerous warnings about specific types of practices that are unlawful and/or unethical. I recommend that both the Commission and the Acupuncture Board look at the Board of Psychology's consumer brochure; it is available on the Board's website at www.psychboard.ca.gov.

Question: Do you think it would help consumers if acupuncturists were required to hand them some sort of "informed consent" document explaining the differences between acupuncture and other forms of treatment?

Answer: The effectiveness of that sort of document would depend on the required contents of the document, and the timing and manner in which it is required to be delivered to the consumer. For example, the Dental Board is required to hand patients a brochure describing the various kinds of dental fillings, including the risks, benefits, and disadvantages of each. However, that Board's brochure is currently very long and is relatively incomprehensible (in our view). Some dentists do not distribute the brochure at all; others don't hand it to the patient until he/she is in the chair after novocaine injection — clearly, that patient will not have a meaningful opportunity to review all their options. If the brochure were more readable and understandable to the average consumer, and if it were given to the patient in a way that afforded time to read and study it, it might be beneficial.

Question: You have argued for a public member majority and/or all public members on the Acupuncture Board. How can a public member contribute to the design / drafting of the licensure exam?

Answer: Allowing Board members — whether they are professional members or public members — to have intimate and significant input into a licensing exam leads

only to trouble. This Board, above all others, should realize the dangers of placing responsibility for a licensing exam into the hands of someone who does not appreciate his role as a regulator. We believe that the design of licensing exams should be left primarily up to psychometricians — individuals who are specially trained in identifying (through an occupational analysis) the knowledge/skills/abilities (KSAs) that should be tested on the exam, and in evaluating the exam to ensure that those KSAs are in fact adequately tested. In our view, the Acupuncture Board should rely on DCA's Office of Examination Resources for its exam drafting — and Board members should be excluded from that process entirely.

Question: The acupuncture profession wants to increase the number of education hours required for licensure from 3,000 to 4,000 hours. What do you think about this?

Answer: I think the number of required hours is absolutely irrelevant. You can't just add 1,000 hours onto a 3,000-hour required acupuncture curriculum and call yourself a doctor. Again, psychometricians should play a key role here — in identifying the KSAs for entry-level competence, and in determining the number of hours necessary to train the average individual in those KSAs required for safe entry-level (point-of-licensure) practice. At point of licensure, we do not demand mastery of the subject matter from candidates. We demand entry-level competence; and all licensure requirements — whether they are educational, experience, or examination — should be measured by what is necessary for entry-level competence.

The Board of Accountancy, which regulates certified public accountants (CPAs), attempted this very thing in 2001. To be licensed as a CPA prior to that time, one did not need a bachelor's degree. The CPA profession sought to increase the Board's educational requirements for licensure to 150 hours of college-level education — the equivalent of a master's degree. Yet the additional hours they sought were not required to be related at all to accounting — those hours can be in any subject, so long as the candidate has completed 150 hours. In our view, that is an arbitrary barrier to entry into the CPA profession, with absolutely no nexus to competence as a CPA. We believe such a requirement will have a major impact on the entry of women, minorities, and low-income people into the profession, and we opposed it. You can't just add hours onto an educational requirement with no justification — there should be a specified curriculum for those hours, and a demonstration both of their necessity for entry-level competence and an inability to achieve that competence in any other way.

Question: Assuming that the legislature increases the educational requirements for acupuncturist licensure to 4,000 hours, what do we do with existing acupuncturists who have qualified for licensure by completing only 3,000 hours?

Answer: That's a difficult question. If the legislature increases the educational requirements, I assume that's because it is also expanding the scope of practice of licensed acupuncturists, and that the scope expansion can be identified with some particularity. If this is the case, one option is to create a voluntary certification program on top of the existing licensure program. It would work like this: Acupuncturists who complete 4,000 hours qualify for licensure and the certification, and only they can perform the enhanced scope of practice. Additionally, already-licensed acupuncturists with 3,000 hours can qualify for the certification program by completing an additional 1,000 hours in a specified curriculum that instructs in the area(s) of enhanced scope of practice.

I can think of one precedent for this. Several years ago, optometrists sought to prescribe drugs — something they had traditionally been prohibited from doing; their scope of practice limited them to detecting and correcting vision deficiencies, and prohibited them from diagnosing and treating conditions of the eye. After many years of legislative failures, they finally succeeded in persuading the legislature to expand their scope of practice to permit certain optometrists to prescribe certain drugs for a limited purpose from a limited formulary. Not every licensed optometrist can automatically prescribe these drugs. To do so, an optometrist must complete a new "certification program" administered by the Board of Optometry (in addition to the traditional licensing program). To qualify for certification, optometrists must complete extra education (in pharmacology), extra training, and take additional exams. Only optometrists who have the certification are permitted to prescribe drugs. That is one way to approach this issue, assuming you have an identifiable scope of practice expansion.

Question: Many acupuncture practices are failing because of managed care and other barriers. What advice do you have for the acupuncture profession?

Answer: The profession should demand responsible regulation by an independent regulator charged with public protection as its highest priority. I realize that you face an uphill battle because the medical profession is so entrenched. However, there is increasing public demand for acupuncture and other forms of "alternative medicine" therapies and treatments. Rather than insisting on controlling your own regulation, you should be willing to subject yourselves to vigorous regulation by a regulator that is independent of the acupuncture profession, a regulator that has credibility in the eyes of the public.